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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/733,648 | 12/08/2000 | Andrea Michalik | 2384-002128 | 3034 |
| 28289 | 7590 | 11/30/2005 | EXAMINER | |
| THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219 | | | BELL, KENT L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1661 | |

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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| APPLICATION NO/ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER |
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11/15/05

DATE MAILED:

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Commissioner for Patents

This communication is responsive to the judgment by the United States Court of Appeals for the Federal Circuit (03-1585) rendered on August 16, 2004, in which the decision by the United States Patent and Trademark Office Board of Patent Appeals and Interferences was vacated and remanded.

More specifically, the CAFC remanded this and another case for "further factual findings relating to the accessibility of the foreign sales of the claimed plants and the reproducibility of the claimed plants from the plants that were sold."

REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application. The information is required to determine the accessibility of the foreign sales and the reproducibility of the plants that were sold to the public, more than one year prior to the effective filing date of this application.

The information is required to determine when, and to what extent, the claimed plant variety 'Pensyb', was publicly available prior to the filing date of the instant application.

In response to this requirement, please provide (to the extent not already provided):

- a) a copy of any plant breeder's rights applications, published proposed denominations, and breeder's rights grants, relating to the claimed plant variety;
- b) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed variety anywhere in the world if the sale, offer for sale, or public distribution occurred more than one year prior to the filing date of this application;
- c) any public information available regarding sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world which occurred more than one year prior to the filing date of this application, including the date(s) and location(s).

The Office does not maintain a collection of Breeders' Rights documents and they are not readily obtainable electronically. It is reasonable to expect that Applicant or the assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

